

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**TROY DELANO MCRAE,**

**Plaintiff,**

**v.**

**Civil Action 2:21-cv-4962**

**Judge Edmund A. Sargus**

**Magistrate Judge Chelsey M. Vascura**

**CORRECTIONAL OFFICER FRYE, *et al.*,**

**Defendants.**

**ORDER**

This matter is before the Court for consideration of a Report and Recommendation issued by the Magistrate Judge on October 29, 2021, (ECF No. 4), addressing Plaintiff Troy Delano McRae's Objection to the Report and Recommendation. (ECF No. 7). For the reasons stated below, the Court **OVERRULES** Plaintiff's Objection to the Report and Recommendation (ECF No. 7), and **ADOPTS** the Report and Recommendation (ECF No. 4). This case is **DISMISSED WITHOUT PREJUDICE**.

The Magistrate Judge recommended denial of Plaintiff's application for leave to proceed *in forma pauperis* (ECF Nos. 1, 3) because Plaintiff's certified trust fund account statement accompanying his application indicates that he currently has \$1,493.60 in his prison trust fund account and that his average monthly deposits for the last six months were in the amount of \$262.53. (*Id.*) Accordingly, the Magistrate Judge found that Plaintiff has sufficient funds to pay the filing \$402.00 fee required to commence a civil action in this Court. In his objection, Plaintiff does not dispute that he has sufficient funds to pay the filing fee required to commence this

action, but asks that, should the Report and Recommendation be adopted, that his case be dismissed without prejudice. (ECF No. 7.)

If a party objects within the allotted time to a report and recommendation, the Court “shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1); see also Fed. R. Civ. P. 72(b). Upon review, the Court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1).

The Court agrees that the funds available in Plaintiff’s trust fund account prevents him from demonstrating that his poverty prevents him from paying the filing fee. The Court therefore **OVERRULES** Plaintiff’s Objection to the Report and Recommendation (ECF No. 7), and **ADOPTS** the Report and Recommendation (ECF No. 4). Plaintiff’s applications to proceed *in forma pauperis* (ECF Nos. 1, 3) are **DENIED**. As Plaintiff’s objection indicates he does not intend to pay the filing and instead prefers dismissal of his case without prejudice, this action is **DISMISSED WITHOUT PREJUDICE**. Plaintiff is **ORDERED** to identify Civil Action 2:21-cv-4962 as a related case should he choose to re-file this action.

**IT IS SO ORDERED.**

3/5/2022  
DATE

s/Edmund A. Sargus, Jr.  
**EDMUND A. SARGUS, JR.**  
**UNITED STATES DISTRICT JUDGE**